IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO.125 OF 2006

IN

SUMMARY SUIT NO.2508 OF 2005

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Shroff ....Plaintiff

v/s.

Nampack Plastics Pvt.Ltd. ....Defendant

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Mr.V.A. Sampat for the Plaintiff.

Mr.Rishabh Shah i/b Divekar Co. for the Defendant.

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CORAM: D.K.DESHMUKH, J.

DATED: 31ST JULY, 2006

P.C.:

1. The Plaintiff has filed this suit for recovery of the price of the goods supplied by the Plaintiff to

the Defendant. The Plaintiff also relies on cheque which is alleged to have been issued by the Defendant towards repayment of the price of the goods. The Plaintiff relies on the invoices and the Lorry Receipt issued by him, which according to him, have been signed by the Defendant.

2. So far as supply is concerned, the case of the Defendant is that the Plaintiff is not a supplier, but he is merely a commission agent. According to the Defendant, goods have actually been supplied by somebody else. The Plaintiff is merely taking advantages of his name being shown on the Lorry Receipt. According to the Defendant, in the rejoinder filed by the Plaintiff, the Plaintiff himself has stated that till 2002 the Plaintiff was supplying the goods to the Defendant as a commission agent/dealer. But as that arrangement has not found to be satisfactory, at the request of the Defendant, the Plaintiff himself started supplying the goods in his capacity as an owner of the goods. It means that before 2002, the Plaintiff was merely a commission agent and not a supplier. The Defendant, however, pointed out a Lorry receipt before 2002 which shows that the name of the Plaintiff as a supplier. If

admittedly before 2002 the Plaintiff was not the supplier, it was for the Plaintiff to explain why the Lorry Receipt before 2002 showed him as a supplier. The Plaintiff has not given any explanation and because of this Lorry Receipt on which the Plaintiff relies for establishing that the goods have been actually received by the Defendant becomes doubtful.

3. So far as the cheque is concerned, the defence of the Defendant is that the Plaintiff is using a cheque which was signed by the Defendant in the year 2002 and was blank. The Defendant has produced a document from the Bank which shows that the cheque which bears the date of the year 2003 was actually from the cheque book of the Defendant for the year 2002. Though the document issued by the bank does not conclusively establish that the blank cheque was given by the Defendant to the Plaintiff in the year 2003, it creates doubt about the transaction and therefore, in my opinion, it would be hazardous to pass a decree in favour of the Plaintiff in summary jurisdiction.

4. Taking overall view of the matter, therefore, in my opinion, summons for judgment deserves to be

disposed of and the Defendant deserves to be granted leave to defend the suit. Summons for judgment is , therefore, disposed of. Defendant is granted unconditional leave to defend the suit. Written statement to be filed within a period of eight weeks from. Suit be transferred to commercial cause list.

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